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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

7 CHARLES V. FARNSWORTH,

8 Plaintiff,

9 v.

10 TEDDI ARMSTRONG, *et al.*,

11 Defendants.

Case No. C20-5007-MJP-MLP

ORDER GRANTING PLAINTIFF'S
MOTION TO RE-SUBMIT BRIEF IN
OPPOSITION TO DEFENDANTS'
SUMMARY JUDGMENT MOTION

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13 This is a civil rights action brought under 42 U.S.C. § 1983. On December 22, 2021,
14 Plaintiff submitted to this Court for consideration what he identified as a "Motion to Submit
15 Second Submission of Opposition to Defendant's Motion for Summary Judgment." (Dkt. # 96.)
16 Plaintiff submitted with his motion his brief in opposition to Defendants' summary judgment
17 motion which, at present, is noted on the Court's calendar for consideration on December 17,
18 2021. (Dkt. # 97.) Plaintiff indicates in his motion that, on December 10, 2021, he submitted to
19 the Court for filing, through the prisoner e-filing system, his opposition to Defendants' pending
20 summary judgment motion. (*See* dkt. # 96 at 1-2.) The brief, which was due by December 13,
21 2021, was quite lengthy and was apparently divided into two parts for e-filing by the prison law
22 library staff. (*Id.*)

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1 On December 14, 2021, the Clerk's Office returned the second part of the brief to
2 Plaintiff with an email advising that the documents could not be filed because the case number
3 provided was incomplete and there was no cover page included as required by the local rules.
4 (Dkt. # 96 at 2, 5.) Plaintiff asks that he be permitted to re-submit the complete brief before the
5 Court decides Defendants' summary judgment motion. (*Id.* at 3.)

6 Defendants oppose Plaintiff's motion, and move to strike his opposition brief, on the
7 grounds that it is untimely. (Dkt. # 98.) Defendants fault Plaintiff for waiting until December 22,
8 2021, to seek leave to re-file his brief when he had notice of the filing error over a week earlier.¹
9 (*Id.* at 2.) Defendants correctly note that Plaintiff offers no explanation for the delay, and they
10 argue that the late filing prejudices them because it prevented them from having an opportunity
11 to file a reply brief in support of their motion. (*Id.*)

12 There is no indication on the docket that the Court received any part of Plaintiff's
13 opposition brief on December 10, 2021. However, Plaintiff submitted with his motion a copy of
14 the e-mail he received from the Clerk's Office on December 14, 2021, which appears to confirm
15 that Plaintiff attempted to file his opposition brief on December 10, 2021. (Dkt. # 96 at 5.)
16 Though Plaintiff fails to explain the reason for the delay in attempting to re-submit his brief, the
17 delay was not a particularly lengthy one and any prejudice to Defendants can be easily cured by
18 granting them an opportunity to file a reply brief.

19 Accordingly, the Court hereby ORDERS as follows:
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21 ¹ Defendants incorrectly assert that Plaintiff delayed an additional day, until December 23, 2021, before
22 filing his opposition brief. In fact, as noted above, Plaintiff filed his opposition brief with his motion on
December 22, 2021.

1 (1) Plaintiff's motion to re-submit his brief in opposition to Defendants' motion for
2 summary judgment (dkt. # 96) is GRANTED, and Defendants' cross-motion to strike the brief
3 (dkt. # 98) is DENIED.

4 (2) Defendants may file a reply brief in support of their motion for summary
5 judgment not later than ***Friday, January 21, 2022***. Defendants' summary judgment motion (dkt.
6 # 89) is RE-NOTED on the Court's calendar for consideration on the same date.

7 (3) The Clerk is directed to send copies of this Order to Plaintiff, to counsel for
8 Defendants, and to the Honorable Marsha J. Pechman.

9 Dated this 13th day of January, 2022.

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12 MICHELLE L. PETERSON
13 United States Magistrate Judge
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